Furthermore, by this Office Action, the Examiner has required restriction to one of the following groups of Claims under 35 U.S.C. § 121:

Group I: Claims 1-10, 19-30, 39-46, drawn to a nucleic acid comprising a polynucleotide sequence of SEQ ID NO:1, or of a complementary polynucleotide sequence; a recombinant vector comprising the nucleic acid; a recombinant host cell comprising the nucleic acid; a pharmaceutical composition comprising the nucleic acid, the recombinant vector or the host cell; classified in class 536, subclass 23.5, class 435, subclasses 320.1 and 325;

Group II: Claims 11-14, drawn to a kit for amplifying the nucleic acid of claim 1, comprising two nucleotide primers, wherein the two nucleotide primers are selected from the group consisting of at least 15 consecutive nucleotides of SEQ ID NO:9 and one polynucleotide sequence of SEQ ID NOs:9, 11, 12, 14-19, 21, 23, 24 or 25, and reagents for an amplification reaction; and a method of amplifying a region of the nucleic acid of claim 1, classified in class 536, subclass 23.1. It is also the Examiner's opinion that should Group II be elected, Applicants are required to select two nucleotide primers from the nucleotide sequences claimed in Claim 14 (a) or Claim 14 (b), each nucleotide primer is identified by a "SEQ ID NO:";

Group III: Claims 15-18, drawn to a kit for detecting the nucleic acid of Claim 1, comprising a nucleotide probe; and a method of detecting the nucleic acid of Claim 1,

classified in class 536, subclass 231. The Examiner has also asserted that should Group III be elected, Applicants are required to select one nucleotide sequence identified by "SEQ ID NO:" from Claim 15 or 17;

Group IV: Claims 31, 34 and 47-48, drawn to polypeptide comprising an amino acid sequence of SEQ ID NO:10, and a pharmaceutical composition comprising the polypeptide, classified in class 530, subclass 350;

Group V: Claims 32, 33 and 35-38, drawn to an antibody directed against the polypeptide, a diagnostic kit for detecting a polypeptide comprising the antibody; and a method of detecting a polypeptide, classified in class 530, subclass 387.1;

Group VI: Claims 49-56, drawn to a use of the nucleic acid, the recombinant vector or recombinant host cell for the manufacture of medicament, classified in class 536, subclass 23.5, class 435, subclasses 320.1 and 325;

Group VII: Claims 57-58, drawn to a use of the polypeptide for the manufacture of a medicament, classified in class 530, subclass 350;

Group VIII: Claim 59, drawn to a use of the recombinant host cell expressing the polypeptide for screening an active ingredient for the treatment of a nervous system dysfunction, classified in class 435, subclass 325;

Group IX: Claims 60-62, drawn to an implant comprising the recombinant host cell; classified in class 424, subclass 435, subclass 325;

Group X: Claims 63-65, drawn to a method of identifying a modulator, agonist or antagonist of the polypeptide, using the recombinant host cell to express the polypeptide, and measuring the β-galactosidase activity in the cell in the presence or absence of the modulator, classified in class 536, subclass 23.5, class 435, subclasses 320.1 and 325; and

Group XI: Claim 66, drawn to a use of the polypeptide to control or participate in the gene expression, classified in class 530, subclass 350.

In the restriction requirement, the Examiner has asserted that the subject matter of each of these groups of Claims is distinct. In particular, the Examiner believes that the different groups of Claims are drawn to nucleic acid, vector or host cell; a kit for amplifying the nucleic acid; a kit for detecting the nucleic acid, and an implant comprising recombinant host cells that would have different modes of operation and different utilities For example, it is the Examiner's belief that a nucleic acid of the claims of Group I comprises a sequence of SEQ ID NO:1, whereas the Claims of Group II contain different nucleotide sequences as nucleotide primers, the Claims of Group III would contain different nucleotide sequences as a nucleotide probe, and the Claims of the Group IX would contain host cells as implants.

It is also the Examiner's opinion that the subject matter of the Claims of Group I and the subject matter of the Claims of Groups II, III, VI, VIII and X are related as product and process of use. Thus, the Examiner has asserted that these groups of Claims can be shown t be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a material different process using that product (MPEP § 806.05(h)). In the instant case, the Examiner believes the methods of the Claims of Groups II, III, VI, VIII and X are alternative processes of the use of the product of the Claims of Group I.

Furthermore, the Examiner believes that the Claims of Groups IV, VII and XI are related as product and process for use. In particular, the Examiner believes that the methods of the Claims of Groups VII and XI are alternative processes of the use of the product of the Claims of Group IV.

Other assertions the Examiner has made in support this requirement are:

(1) the products of the Claims of Groups IV and V are distinct from the methods of the Claims of Groups II, III, VI, VIII and X because the products of the Claims of Groups IV and V can be neither made nor used by the methods of the Claims of Groups II, III, VI, VIII and X; and

(2) The products of the Claims of Groups I, II, III and IX are distinct from the methods of the Claims of Groups V, VII and X because the products of the Claims of Groups I, II, III and IX can be neither made nor used in the methods of the Claims of Groups V, VII and XI.

In response, solely to be responsive to the Requirement for Restriction, Applicants provisionally elect, WITH TRAVERSAL, to prosecute the Claims of Group I, i.e., Claims 1-10, 19-30, 39-46, drawn to a nucleic acid comprising a polynucleotide sequence of SEQ ID NO:1, or of a complementary polynucleotide sequence; a recombinant vector comprising the nucleic acid; a recombinant host cell comprising the nucleic acid; a pharmaceutical composition comprising the nucleic acid, the recombinant vector or the host cell; classified in class 536, subclass 23.5, class 435, subclasses 320.1 and 325. Furthermore, Applicants respectfully request reconsideration of the requirement for restriction for reasons provided as follows:

Under 35 U.S.C. § 121 "two or more independent and distinct inventions ... in one Application may ... be restricted to one of the inventions." Inventions are "independent" if "there is no disclosed relationship between two or more subjects disclosed" (MPEP 802.01). The term "distinct" means that "two or more subjects as disclosed are related ... but are capable of separate manufacture, use or sale as claimed, AND ARE PATENTABLE OVER EACH OTHER" (MPEP 802.01) (emphasis in original). However, even with patentably distinct inventions[1], restriction is not required unless one of the following reasons appear (MPEP 808.02):

1. Separate classification
2. Separate status in the art; or
3. Different field of search.

Further, under Patent Office Examining Procedures, "[i]f the Search and Examination of an entire Application can be made without serious burden, the Examiner must examine it on the

1 Applicants in no away admit these Groups of Claims are drawn to patentably distinct inventions.

merits, even though it includes claims to distinct or independent inventions" (MPEP 803, Rev. 8, May 1988) (emphasis added).

Applicants respectfully submit that the groups of Claims designated by the Examiner fail to define compositions and methods for using such compositions with properties so distinct as to warrant separate examination and search. For example, the Examiner has classified the Claims of Group I in class 536. However, the Examiner has also classified the Claims of Groups II and III in class 536. Since all of the Claims of these Groups have been classified into the same class, a search of the subject matter of the Claims of Group II and III may well require an additional search of the ***identical class*** searched with respect to the subject matter of Claims of Group I. Hence, conjoint examination of the Claims of Groups I, II and III can be made without serious burden to the Examiner.

The Examiner's assertions to the contrary notwithstanding, Applicants respectfully submit the conjoint examination and inclusion of all the Claims of the present Application, or at least modification to permit the conjoint examination of the Claims of Group I and Groups II and/or III, would not present an undue burden on the Examiner. Accordingly, withdrawal of the entire Requirement for Restriction, or at least, a revision of the Requirement for Restriction to permit the conjoint examination of at least the Claims of Group I and Group II and/or III is respectfully requested.

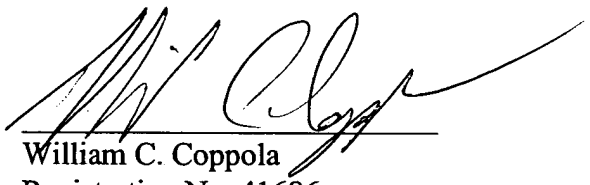
Fees

No additional fees are believed to be necessitated by the foregoing Response. However, should this be erroneous, authorization is hereby given to charge Deposit Account No. 18-1982 for any underpayment, or credit any overages.

CONCLUSION

In view of the above, early action on the merits is courteously solicited.

Respectfully submitted,



William C. Coppola
Registration No. 41686

AVENTIS PHARMACEUTICALS INC.
Patent Department
Route 202-206
P.O. Box 6800
Bridgewater, NJ 08807
Telephone (908) 231-4854
Telefax (908) 231-2626

Version With Markings To Show Changes Made

Matter that is within brackets is to be removed, and matter that is underlined is to be added.

IN THE SPECIFICATION:

Page 41, third paragraph:

Antibodies of the Invention[Error! Bookmark not defined.]

A polypeptide according to the invention produced recombinantly or by chemical synthesis, and fragments or other derivatives or analogs thereof, including fusion proteins, may be used as an antigen or immunogen to generate antibodies. Preferably, the antibodies specifically bind to Relax or ngn3 polypeptide according to the invention. More preferably, the antibodies specifically bind human ngn3, but do not bind other forms of ngn3.

IN THE CLAIMS:

Please amend Claim 1 as follows:

1. (Amended) An isolated nucleic acid comprising a polynucleotide sequence of [SEQ ID NO: 10] SEQ ID NO: 1, or of a complementary polynucleotide sequence.